UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,177	07/23/2003	Georgios Cheliotis	CH920020048US1 (16840)	8250

23389   7590   11/26/2008
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EXAMINER
VIG, NARESH

ART UNIT	PAPER NUMBER
3629	

MAIL DATE	DELIVERY MODE
11/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>04 August 2008</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>30</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>30</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

This is in reference to communication received 04 August 2008. Claim 30 is

pending for examination.

Response to Arguments

In response to applicant's argument that a contract guarantor provides both the

first and second computing resources.

However, as currently claimed by the applicant, contactor guarantor provides the

first computing resource, and, second computing resource is provided to the contract

guarantor.

In response to applicant's argument that cited references do not teach using two

types of computing resources, a stochastic resource (provided by spare cycles/capacity

of grid computing devices) and deterministic computing.

However, as currently claimed, there are two computing resources used which

are supported by the cited references. Applicant has not positively claimed using

capabilities of stochastic resource and deterministic computing resource in their claimed

invention.

Applicant's other arguments and concerns are responded to in response to the

amended claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As currently claimed, it is not clear whether contract guarantor is a person/business or a system.

Applicant recites the limitation providing, <u>by a contract guarantor</u>, a first computing resource for fulfilling the resource contract, said first computing resource capable of being controlled <u>by a guarantor of said contract</u> (**i.e. contractor guarantor**) to provide a requested computing service. As currently claimed, it is not clear whether the contract guarantor is the same entity or system, or, they are different entities or system,

Applicant recites the limitation, <u>providing, to said contract guarantor</u>, a second computing resource capable of providing computing capacity according to a stochastic process, said second computing resource incapable of being controlled by the guarantor. As currently claimed, it is not clear who provides the second computing resource to the contract guarantor. Since said second resource is not is incapable of being controlled by the guarantor, how does the guarantor monitor the second

computing resource, is the second computing resource communicatively coupled to the

first computing resource and controller device.

it is not clear whether contract terms are provided to the controller device to

enable said controller device monitor the second computing device

who provides first and second computing resources, and, who monitors terms of

contract, since both first and second computing resources are not controlled by same

entity or resource.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over HP

News Release "Compaq Extends Capacity on Demand to ProLiant Server Platform"

hereinafter known as HP, in view of Follet article "IBM Tivoli Pushes Business Impact

Management"

Regarding claim 30, as best understood by examiner, HP teaches a method for

providing a requested computing resource service. HP does not exclusively teach

conditions for requested computing resources, However, HP teaches that customers

can dial-up or dial-down (i.e. increase or decrease CPU capacity) based on their needs.

Follet teaches that IBM Tivoli can automatically monitor the CPU usage, and, allocate or

remove resources within the pre-established thresholds (thresholds can be set based

on terms of contracts).

Therefore, at the time of invention, it would have been obvious to one of ordinary

skill in the art to modify HP teaching by adopting teaching from Follet article to automate

the provisioning of resources in a computing environment, control costs associated with

infrastructure implementation, etc.

HP in view of Follet teaches capability for:

Providing by a contract guarantor a requested computing resource service

according to terms of a contract;

providing a first computing resource for fulfilling the resource contract, said first

computing resource capable of being controlled by a guarantor of said contract to

provide a requested computing service (HP, customers are provided with a system);

providing, to said contractor guarantor, a second computing resource capable of

providing computing capacity (HP, customer and increase computing capacity).

Eventhough, HP in view of Follet does not explicitly teach using Stochastic process,

however, using an existing technology to improve a product is old and known to one of

ordinary skill in the art.

utilizing the second computing resource for fulfilling the contract (Tivoli,

automatically adding or removing resources to manage resources with demand),

monitoring, by a controller device, conditions of said second computing

resources during a contract fulfillment (Tivoli, automatically adding or removing

resources to manage resources with demand),

detecting, by said controller device, a probability of failing contract fulfillment by

determining that the contract is incapable of being fulfilled by said second computing

resource within the time tolerance (Tivoli, monitors the usage of the server to ensure it

does not cross pre-established thresholds); and, in response,

transferring a remainder of said contract that is not yet fulfilled to the first

computing resource (an obvious result when added capacity is removed), and

utilizing the first computing resource for guaranteeing the fulfillment of the

resource contract if the resource contract is incapable of being fulfilled utilizing only the

second computing resource (an obvious function which can be performed when there is

only one processor is in use),

wherein said contract guarantor accepts the contract with a guarantee to provide

the requested computing resource service with the given conditions.

Claim 30 rejected under 35 U.S.C. 103(a) as being unpatentable over Landherr

et al. US Patent 6,880,156.

Regarding claim 30, Landherr teaches providing a requested computing resource

service. Even though Landherr does not explicitly teach providing computing resource

service according to terms of a contract, however, providing resource to user according

to terms of contract is old and known to one of ordinary skill in the art to document

Statement of Work, contract deliverable etc. Therefore, Landherr can be used to fulfill

contract terms which describe conditions of the requested computing resource service.

Landherr teaches capability for:

Providing, by a contractor guarantor, a first computing resource for fulfilling the

resource contract, said first computing resource capable of being controlled by a

guarantor of said contract to provide a requested computing service (System allocator,

application servers) [Landherr, col. 2, lines 32 – 42, Fig. 2 and disclosure associated

with Fig. 2];

Providing, to said contract guarantor, a second computing resource capable of

providing computing capacity (Landherr, allocator can activate additional servers)

[Landherr, abstract]. Even though, Landherr does explicitly teach using Stochastic

process, however, using an existing technology like stochastic programming in

situations involving scenarios about the future to improve an existing product is old and

known to one of ordinary skill in the art.

Landherr teaches capability for:

utilizing the second computing resource for fulfilling the contract (Each of the

computers is capable for hosting a server application, therefore, any of the plurality of

Landherr server can be used to fulfill the contract) [Landherr, col. 2, lines 35 – 35]

monitoring, by a controller device, conditions of said second computing

resources during a contract fulfillment (Landherr teaches monitoring thresholds, i.e.

terms of a contract). Therefore, Landherr teaches capability for supporting contracts wherein conditions can include a time tolerance value set to define a time before a time limit for fulfilling the contract, said time tolerance value calculated for guaranteeing enough computing capacity on the first computing resources for fulfilling the contract; and,

detecting, by said controller device, a probability of failing contract fulfillment by determining that the contract is incapable of being fulfilled by said second computing resource within the time tolerance (Landherr teaches capability for determining when more resources are needed, i.e. server fulfilling the contract cannot handle the workload of the contract) [Landherr, lines 26 – 28];

transferring a remainder of said contract that is not yet fulfilled to the first computing resource (system allocator), and utilizing the first computing resource (system allocator) for guaranteeing the fulfillment of the resource contract if the resource contract is incapable of being fulfilled utilizing only the second computing resource (system allocator allocates another server),

wherein said contract guarantor accepts the contract with a guarantee to provide the requested computing resource service with the given conditions.

Conclusion

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

                                                    /Naresh Vig/
November 23, 2008   Primary Examiner, Art Unit 3629